

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE

v

Laser Projection Technologies Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:42 I/II employer/employee relationship

Date of Hearing: June 4, 2015

Case No.: 50052

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant asserts he was an employee of Laser Projection Technologies Inc and is owed \$30,200.00 for the period of May 16, 2014 through July 25, 2014. He acknowledges he had a dual role with Laser Projection Technologies Inc as both an independent contractor and an employee.

Laser Projection Technologies Inc denies the claimant was an employee. They hired his company as an independent contractor. He made the request that payments should be paid to him directly under his name as he and his boards of directors were experiencing difficulties. Further, they instructed the claimant to cease all work on June 26, 2014.

FINDINGS OF FACT

The claimant's company, Titansan Engineering Inc and Laser Projection Technologies Inc began a working relationship in 2009. The parties had a prior relationship when the claimant used a different company name. In May 2013, the claimant changed his billing from Titansan Engineering Inc to his name personally. He signed an independent contractor agreement with Laser Projection Technologies Inc in his name individually, dated April 10, 2013. Both parties extended this agreement on two occasions, July 19, 2013 and November 4, 2013. The claimant also signed a non-disclosure agreement with Laser Projection Technologies Inc on April 10, 2013, in the name of Mobile Cad Inc, as the President and CEO. The claimant also signed an IRS W-9 form on June 4, 2014, in his name individually.

This Department must first determine the claimant's status.

RSA 275:42 I defines "employer" as, I. The term "employer" includes any individual, partnership, association, joint stock company, trust, corporation, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, employing any person, except employers of domestic labor in the home of the employer, or farm labor where less than 5 persons are employed.

RSA 275:42 II defines "employee" as, "means and includes every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment, but shall not include any person exempted from the definition of employee as stated in RSA 281-A:2, VI(b)(2), (3), or (4), or RSA 281-A:2, VII(b), or a person providing services as part of a residential placement for individuals with developmental, acquired, or emotional disabilities, or any person who meets all of the following criteria:

(a) The person possesses or has applied for a federal employer identification number or social security number, or in the alternative, has agreed in writing to carry out the responsibilities imposed on employers under this chapter.

(b) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer.

(c) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer. However, this shall not prohibit the employer from reaching an agreement with the person as to completion schedule, range of work hours, and maximum number of work hours to be provided by the person, and in the case of entertainment, the time such entertainment is to be presented.

(d) The person hires and pays the person's assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants' work.

(e) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations.

(f) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work.

(g) The person is not required to work exclusively for the employer.

The Hearing Officer finds the claimant could be considered an employer under RSA 275:42 I because he had an employee from his company Titansan Engineering Inc and an employee under another of his company names, Mobile Cad Inc working with Laser Projection Technologies Inc.

The Hearing Officer finds that the claimant could also be considered an employee of an employer, not an independent contractor, because the claimant does not meet the criteria in (f). The claimant was not responsible for the satisfactory completion of work, and he could not be held contractually responsible for failure to complete the work.

The claimant is acting as an agent for his companies, Titansan Engineering Inc and Mobile Cad Inc and/or on his own behalf. He uses the entity names as well as his own name fluidly and interchangeably on documentation with Laser Projection Technologies Inc.

Because the claimant fluidly and interchangeably uses his company names and his name personally, the Hearing Officer is unable to determine whether the claimant was acting as an employer or an employee at any given time in his relationship with Laser Projection Technologies Inc.

The claimant has the burden to prove he was an employee of Laser Projection Technologies Inc. during the period of May 2014 through July 2014. The claimant fails to meet that burden as he did not provide credible or persuasive testimony or evidence to show that he was acting in the role of an employee during the period of May 2014 through July 2014, the time period for which he is claiming wages. Therefore, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence he was an employee of Laser Projection Technologies Inc. between May 2014 and July 2014.

Even if the claimant had proven he had been an employee during this period, he would still retain the burden to prove he was due the claimed wages.

The claimant admitted he did not perform some of the work for which he had invoiced Laser Projection Technologies Inc; that others had performed that work during the timeframes he had invoiced. Many of the invoices referenced work that the claimant agrees was performed for the benefit of his company, Titansan Engineering Inc., in his admitted role as an independent contractor.

Laser Projection Technologies Inc. also advised the claimant to cease any activities for the company as of June 26, 2014. They further advised staff to eliminate the claimant from any and all communications as of that time.

The Hearing Officer finds that the claimant would not have met his burden to prove by a preponderance of the evidence that he was due the claimed wages.

DECISION

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that he is owed the claimed wages, it is hereby ruled that the Wage Claim is invalid.

Melissa J. Delorey
Hearing Officer

Date of Decision: June 30, 2015

MJD/kdc